

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

In re:	:	Chapter 11
	:	
Circuit City Stores, Inc., et al.,	:	Case No. 08-35653 (KRH)
	:	
Debtors.	:	

**RESPONSE OF KELLY BREITENBECHER TO DEBTORS' EIGHTH
OMNIBUS MOTION FOR ORDER PURSUANT TO BANKRUPTCY
CODE SECTIONS 105(A) AND 365 (A) AND BANKRUPTCY RULE 6006
AUTHORIZING REJECTION OF CERTAIN EXECUTORY CONTRACTS**

COMES NOW Kelly Breitenbecher, ("Ms. Breitenbecher "), by the undersigned counsel, and for her response to *Debtors' Eighth Motion for Order Pursuant to Bankruptcy Code Sections 105(a) and 365(a) and Bankruptcy Rule 6006 Authorizing Rejection of Certain Executory Contracts*) ("Motion"), and states as follows:

1. Ms. Breitenbecher was employed by Circuit City as a Senior Vice President, Operations and Supply Chain, until April 17, 2009. She entered into an Employment Agreement with Debtors on October 18, 2007. She was also a party to a special cash retention award dated January 3, 2008. The Debtor's Motion lists Ms. Breitenbecher's employment agreement as an executory contract to be rejected.

2. Ms. Breitenbecher has filed a Proof of Claim, and a Request for Payment of Administrative Expense, based on the Employment Agreement and the special cash retention award (together, the "Claims"). Circuit City objected to the Claims in its Fifty-Sixth Omnibus Objection to Claims, and its Fifty-Eighth Omnibus Objection to Claims. Ms. Breitenbecher filed an opposition to the objections, and they remain pending as of this date.

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3. From the date of Circuit City's bankruptcy petition, to the date she was terminated, Ms. Breitenbecher fully performed under the Employment Agreement. Circuit City accepted the benefits of Ms. Breitenbecher's services as an employee, and thus the benefits of the Employment Contract. Now, after accepting the benefits, Circuit City seeks to reject the contract. The Motion does not state what date the rejection would be effective, but Circuit City should not be able to avoid the burdens of a contract under which it received the benefits thereof, particularly provisions regarding separation pay.

4. Additionally, as Ms. Breitenbecher's Claims remain pending in the Fifty-Sixth and Fifty-Eight omnibus objections. Any order on Debtor's Motion herein should not prejudice Ms. Breitenbecher's rights to defend Debtors' objection to the Claims, and/or her right to prosecute the Claims.

5. Ms. Breitenbecher also joins in the *Response of Lawrence W. Fay to Debtors' Eighth Omnibus Motion for Rejection of Executory Contracts*, filed at docket no. 6485.

WHEREFORE, Kelly Breitenbecher respectfully requests the Court overrule the Motion, and grant such further relief as is just and proper under the circumstances.

Respectfully Submitted,

KELLY BREITENBECHER

By Counsel

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CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of February, 2010, a true and accurate copy of the foregoing was electronically filed with the Clerk of the Bankruptcy Court for the Eastern District of Virginia, Richmond Division, using the CM/ECF system, which thereby caused the above to be served electronically on all registered users of the ECF system that have filed notices of appearance in this matter, and was mailed by U.S. Mail, first class, postage prepaid, to all persons on the below Service List:

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